

STATUS OF THE CLAIMS

Claims 1-7, 9, and 11-50 were pending.

All of the claims were indicated as allowable.

Claim 5 is amended.

Claims 1-7, 9, and 11-50 are presented for reconsideration.

REMARKS

On February 4, 2005, Applicant submitted a draft amendment by e-mail for discussion purposes with the Examiner. After discussion with the examiner, Examiner Zimmer graciously offered to make the amendment by Examiner's amendment, which Applicant accepted. The claims were amended by Examiner's amendment in the manner indicated in the e-mail draft sent by applicant and the rationals discussed are correctly represented in the Examiner's reasons for allowance.

The focus of that amendment was to eliminate the possibility of inclusion of subject matter that might have an on-sale bar. One formulation that Applicant had sold was a gel that did not have grafted material, was polymerized in the presence of silicone fluid and then after gelling was diluted with a mixture of silicone fluid and isododecane. The Examiner considered that the then pending claims (prior to the last amendment) that were directed to non-graft polymers that were polymerized in the presence of isododecane and then had silicone fluid added would actually be the same composition that was on sale before the critical date. The Examiner had focused on the product-by-process claims.

In the draft amendment, Applicant addressed the matter of the product-by-process claims by eliminating the possibility of a gel which had been prepared by polymerizing in the presence of a hydrocarbon and then dilution with silicone fluid by deleting the silicone oils from the list of diluents in those claims. Applicant inadvertently neglected to address the

matter in claim 5 (a product claim in which the same issue would be present), since the rejection dealt only with product-by-process claims 19-22, 24-27, and 29.

In reviewing the claims as amended by Examiner's amendment against the claims in the draft amendment e-mailed to the Examiner, Applicant has noted that the issue dealt with in the amendment should have also been addressed with respect to claim 5. On February 28, 2005, Applicant therefore telephoned Examiner Zimmer to confirm whether there was some other reason that claim 5 was being not rejected on the same basis. That discussion led to the conclusion that in fact claim 5 did have the same issue involved.

This amendment is to limit the diluents recited in claim 5 to eliminate silicone oils from the scope of diluents recited for the gels. It should be noted that the elimination of the silicone oils from the dilution step (to form a diluted gel) does not eliminate the use of silicone oils in more complex formulations to which the gel (whether or not previously diluted with hydrocarbon and/or alkanol) is added. The only disclaimer of subject matter is a gel before being added to other (non-silicon oil, non-hydrocarbon diluent) cosmetic ingredients consists of the gel, a hydrocarbon and a silicone oil, since that is the material which was on sale before the critical date.

A gel that is polymerized in hydrocarbon that is either undiluted or diluted in hydrocarbon, alkanols, or mixtures thereof, and subsequently incorporated into a more complex formulation that includes other ingredients as well as a silicone oil is still within the scope of the claimed invention since such a composition (the undiluted gel, the diluted gel without silicone oil being present) was never on sale before the critical date. Similarly, a composition having additional non-silicone oil ingredients as well as silicone oil ingredients to which the claimed gel is added is also still within the claimed invention since such a composition was not on sale before the critical date.

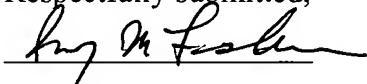
While a gel that is made by the claimed process steps and contains both silicone oil and isododecane (post dilution) was sold as a gel before the critical date, no compositions with other ingredients (with or without silicone oils) having the gels (pre- or post-dilution) incorporated therein were sold prior to the critical date. Thus, the more complex formulations in which the gels are only a component thereof (whether or not containing silicone oils) are still a claimed invention.

Given the above amendments and discussion, Applicant respectfully requests a confirmation that the claims, as now amended are still allowed.

Applicant would like to thank Examiner Zimmer for his time and efforts in resolving the issues presented due to the on-sale activity and reaching agreement as to allowable subject matter.

As such, all of claims 1-7, 9, and 11-50 are now ready for allowance and a confirmation of existing allowance of all of these claims is respectfully requested.

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Respectfully submitted,

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